

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
ELECTRIC LIGHTWAVE, INC.)
For Approval to Change the Name of)
Electric Lightwave, Inc. to)
Electric Lightwave LLC.)

DOCKET NO. 04-0338

DECISION AND ORDER NO. 21646

Filed Feb. 11, 2005
At 10:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)	
ELECTRIC LIGHTWAVE, INC.)	Docket No. 04-0338
For Approval to Change the Name of)	
Electric Lightwave, Inc. to)	Decision and Order No. 21646
Electric Lightwave LLC.)	
_____)	

DECISION AND ORDER

By this Decision and Order, the commission approves the transfer of ELECTRIC LIGHTWAVE, INC.'s ("ELI") certificate of authority ("COA") to ELECTRIC LIGHTWAVE LLC ("EL LLC") to operate as a reseller of telecommunications services in the State, pursuant to Hawaii Revised Statutes ("HRS") § 269-19 and subject to certain conditions specifically stated herein. To the extent applicable, the commission also, on its own motion, waives the requirements of HRS § 269-16.92.

I.

Introduction

ELI requests commission approval to transfer its COA to EL LLC, which will also ultimately result in a change in name from ELI to EL LLC ("Proposed Transaction").¹

¹ELI's application, filed on November 24, 2004 ("Application"). In it's Application, ELI initially requests that the commission approve its name change. However, because ELI represents that the change in name will ultimately result in transferring a COA from one legal entity to another legal entity, we will treat this Application as a request to transfer its COA

ELI served a copy of the Application on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate").² The Consumer Advocate, stated in its Statement of Position, filed on January 6, 2005 ("Statement of Position"), that it does not object to the approval of the Proposed Transaction, described above, subject to certain recommendations noted below.

II.

Background

A.

Overview of Subject Entities

ELI, a Delaware corporation, is a public utility that holds a commission-issued COA to provide intrastate telecommunications services on a resold basis within the State of Hawaii ("State").³

EL LLC is a newly formed Delaware limited liability company authorized to do business in the State as a

under HRS § 269-19. ELI also represents that it proposes to transfer ELI's customers to EL LLC. The commission will not review and consider the proposed transfer of ELI's customers to EL LLC as it has traditionally held that the acquisition of a carrier's customers does not require commission approval. *In re Startec Global Licensing et al.*, Docket No. 04-0275, Decision and Order No. 21400 (December 20, 2004); and *In re Cable & Wireless USA, Inc. and Primus Telecommunications, Inc.*, Docket No. 02-0349, Decision and Order No. 19779 (November 18, 2002).

²Although ELI's Application does not contain a certificate of service, the Consumer Advocate acknowledged in its January 6, 2005 Statement of Position that it received a copy of the Application on November 30, 2004.

³Decision and Order No. 16592, filed on October 6, 1998, in Docket No. 98-0210.

foreign limited liability company. It is a subsidiary of Citizens Communications Company.

B.

Description of Proposed Transaction

The Proposed Transaction involves a transfer of ELI's COA to EL LLC. ELI represents that the Proposed Transaction "will not result in any loss or impairment of service to customers and end users will continue to receive service at the same rates, terms and conditions."⁴ In addition, ELI represents that the Proposed Transaction "will not cause any change in ownership, financial condition or services of the utility."⁵

C.

Consumer Advocate's Position

In its Statement of Position, the Consumer Advocate states that it does not object to the Proposed Transaction. Nonetheless, the Consumer Advocate also provides the following recommendations for the commission's consideration:

1. ELI should be required to file a revised tariff to reflect its new name as "Electric Lightwave, LLC" within thirty (30) days of this decision and order; and
2. The commission should waive any notification requirements normally required when there are

⁴Application at 2.

⁵Id.

changes in a customers' provider of telecommunications.

III.

Discussion

A.

Proposed Transfer of ELI's COA to EL LLC

HRS § 269-19 provides, in relevant part, that: "[N]o public utility corporation shall sell, lease, assign, mortgage, or otherwise dispose of . . . any franchise or permit, or any right thereunder . . . without first having secured from the public utilities commission an order authorizing it so to do."

ELI contends that EL LLC will be identical to ELI in regards to its qualifications, ownership, financial condition and services provided to the public. As a result, there will be no loss or impairment of service to customers and end users will continue to receive service at the same rates, terms and conditions.

Upon reviewing the record and taking official notice of all pertinent documents in the commission's records relating to ELI, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-48, we find that ELI has sufficiently fulfilled the requirements of HAR § 6-80-18. Accordingly, in light of the above, we conclude that the transfer of ELI' COA to EL LLC should be approved, pursuant to HRS § 269-19, subject to the following conditions:

1. Within thirty (30) days of the date of this decision and order, ELI shall file its initial

tariff, incorporating the change in name from ELI to EL LLC; and

2. EL LLC shall continue to be accountable for any and all of ELI's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of ELI's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

B.

Waiver of Other Regulatory Requirements

Upon consideration of the Consumer Advocate's second recommendation, we acknowledge that HRS § 269-16.92 provides that a telecommunications carrier shall not initiate a change in a subscriber's selection or designation of a long distance carrier without first obtaining authorization from the affected subscriber.

HRS § 269-16.9(e), however, permits us to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Similarly, HAR § 6-80-135 permits us to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

Upon our review, we find that: (1) much of the telecommunications services currently provided by ELI are

competitive; (2) ELI is a non-dominant carrier; and (3) competition, in this instance, will serve the same purpose as public interest regulation. Thus, we will, in our own motion, waive the requirements of HRS § 269-16.92, to the extent applicable, pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.⁶ Similarly, we also find it in the public interest to waive, on our own motion, the applicability of rules set forth in HAR chapter 6-61 to the extent that the Application in this docket is not in compliance with those rules. Thus, for purposes of considering this Application, we will not require the information and/or documents (i.e., financial statements) normally required upon the filing of such Application. The commission, nonetheless, reminds Applicants that all future applications should comply with our applicable rules. For example, all applications and other pleadings that initiate a proceeding before the commission must be accompanied by a certificate of service in accordance with HAR § 6-61-21.

⁶At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS § 269-16.92 or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application or petition involving similar transactions or circumstances.

IV.

Orders

THE COMMISSION ORDERS:

1. The transfer of ELI's COA to EL LLC to operate as a reseller of telecommunications services in the State is approved, pursuant to HRS § 269-19 and subject to the following conditions:

- a. Within thirty (30) days of the date of this decision and order, EL LLC shall file its initial tariff, incorporating the change in name from ELI to EL LLC; and
- b. EL LLC shall continue to be accountable for any and all of ELI's unpaid public utility fees due to the commission, pursuant to HRS § 269-30, and any and all of ELI's annual financial reports that are required to be filed with the commission in accordance with HAR § 6-80-91.

2. The requirements of HRS § 269-16.92 and HAR chapter 6-61, to the extent applicable, are waived.

3. As the holder of a COA, EL LLC shall be subject to all applicable provisions of HRS chapter 269, HAR chapters 6-80 and 6-81, any other applicable State laws and commission rules, and any orders that the commission may issue from time to time.

4. EL LLC shall file its tariffs in accordance with HAR §§ 6-80-39 and 6-80-40. Said tariffs shall comply with the provisions of HAR chapter 6-80. In the event of a conflict

between any tariff provision and State law, State law shall prevail. An original and eight (8) copies of the initial tariff shall be filed with the commission with two (2) copies served on the Consumer Advocate. EL LLC shall ensure that the appropriate issued and effective dates are reflected in its tariffs.

5. ELL and EL LLC shall promptly comply with the requirements set forth above. Failure to promptly comply with these requirements may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii FEB 11 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Kris N. Nakagawa
Kris N. Nakagawa
Commission Counsel

04-0338.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21646 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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Karen Higashi

DATED: FEB 11 2005